IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 538 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KALUBHAI DANABHAI PAGI

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner No. 1

MR H.H. PATEL, APP for Respondent No. 1

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 09/11/2001

ORAL JUDGEMENT

1. Leave to delete respondents No. 2 to 5.

2. Rule. Learned APP Mr.H.H.Patel waives service of rule on behalf of respondent No.1 - State of Gujarat.

3. Learned Advocate Mr. M.M. Tirmizi for petitioner and learned APP Mr. H.H. Patel for respondent - State of Gujarat were heard.

4. The order passed by the learned Sessions Judge, Godhra, in Criminal Misc. Application No. 593 of 2001 on 11th September, 2001 is impugned in this Revision Application. In fact, in Criminal Appeal No.178 of 2001 on 18th June, 2001, this Court (Coram: B.J. Shethna, J.) passed an order that learned advocate for the petitioner was permitted to withdraw the Appeal from the High Court with a liberty to file fresh appeal before the concerned Sessions Court. It was also observed by this Court that the appeal to the Sessions Court would be time barred and if the appeal is filed before the concerned Sessions Court with an application for condonation of delay under Section 5 of the Limitation Act within one month from today, then the Sessions Court may entertain and decide it in accordance with law after condoning the delay in filing the appeal.

5. The present petitioner was appellant in Criminal Appeal No.178 of 2001 was required to file an Appeal along with the application for condonation of delay in the Court of Sessions within one month from the date of the passing of the above said order by this Court in Criminal Appeal No.178 of 2001. It appears that some error is committed in mentioning the date of the above said order passed in Criminal Appeal No. 178 of 2001. The learned Sessions Judge in the impugned order observed that the said order was passed by the High Court in Criminal Appeal No.178 of 2001 on 08th of June, 2001 and since the application for the condonation of delay came to be filed on 14th July, 2001, the same was not within one month, as directed the High Court and, therefore, the application came to be rejected by the impugned order by learned Sessions Judge, Godhra.

6. We have verified the original record of this Court and it appears that there is some error in mentioning the date in the last part of the writ issued and instead of 18th June, 2001, the date of order was mentioned as 8th June, 2001. In fact, on verifying the record, it clearly transpires that the order came to be passed on 18th June, 2001 in Criminal Appeal No. 178 of 2001 and, therefore, the application filed by the present petitioner before the learned Sessions Judge, Godhra, for condonation of delay on 14th June, 2001 is within the period of one month as directed by this Court in the above said order.

7. In this view of the matter, the impugned order is set aside and the learned Sessions Judge, Godhra, is directed to decide the Criminal Misc. Application No. 593 of 2001 afresh considering the fact that the order of this Court in Criminal Appeal No. 178 of 2001 was passed on 18th June, 2001 and not on 08th June, 2001 and the Criminal Misc. Application No. 593 of 2001 was within the period of one month from the date of the aforesaid order of this Court. Rule made absolute.

(J.R. Vora,J.)

p.n.nair